IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPEAL NO.433 OF 2000

Raghunath Tayappa Khandekar]
Age : 27 years,]
R/o Pratappur, Tal.Jath,]
Dist.Sangli]..Appellant
(Ori.Accused)

Vs.

1. The State of Maharashtra]
(at the instance of]
Sr.P.I. Jath Police St.]
Dist.Sangli]
2. Mugabai @ Tanubai w/o]
Suryaba Khandekar]
R/o Pratappur, Tal.Jath]
Dist.Sangli]..Respondents

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Mr.K.S.Patil Advocate for Appellant
Mr.A.M.Shringarpure A.P.P. for State
Respondent no.2 though served absent.

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CORAM: N.V.DABHOLKAR AND
SMT.V.K.TAHILRAMANI,JJ.

DATE : FEBRUARY 24, 2006

ORAL JUDGMENT (PER N.V.DABHOLKAR,J.):

1. Appellant is convicted by IVth Additional Sessions Judge, Sangli for offences punishable under Sections 302 and 201 of Indian Penal Code. He is sentenced to life imprisonment and R.I. for five years on respective counts. On each count, he is sentenced to fine of Rs.10,000/- and in default sentences. Out of the fine amount, an amount of

Rs.6,000/- is ordered to be paid to respondent no.2 Mugabai widow of victim Suryaba Khandekar. The judgment was rendered in Sessions Case No. 36 of 1994 on 5th May, 2000. Feeling aggrieved by the same, present appeal is preferred.

2. According to prosecution story, the incident took place on 19th of November, 1993 at about 7.00 p.m. The victim of the incident namely;- Suryaba was real brother of present accused and Namdeo is their third brother. Admittedly, at the material time, the accused and third brother Namdeo were residing at Sangli for the purpose of earning their livelihood. The incident has taken place at Pratappur when accused had come to native place for the purpose of 'Diwali'. It appears from the evidence that deceased had taken to liquor addiction and for that purpose he had also started selling livestock of the family. It is alleged that couple of days prior to the day of alleged incident, accused had sold she-goats. When he attempted to take away she-buffalo also for the purpose of effecting sale, such attempt was frustrated by the accused. It also appears from the evidence that an attempt was made to re-acquire

the she-goats sold by the accused, but the same was not successful. This was on the same day on which the incident took place in the evening.

. Just before the alleged incident, deceased Suryaba was sitting on the plat-form infront of his house. P.W.6 Tulsabai is wife of cousin brother of the accused, deceased and Namdeo. She is neighbour of the deceased. Suryaba was resting on the platform and therefore, he was wearing under-pant and the banyan. Accused Raghunath was standing at the door of the house. He was also not very properly dressed, but was with one banyan, under-pant and the towel on his person. At this juncture, deceased Suryaba asked his mother to prepare egg-curry. Sister Muktabai (of the accused and deceased) informed Suryaba that there were no eggs at home and hence, she will prepare 'Zunaka' for him. Upon this, Suryaba started shouting abuses. It is said that Raghunath went inside the house and came out with knife. There was hot exchange of words between deceased and the accused which aggravated to a scuffle. During the scuffle, accused Raghunath dragged Suryaba upto dung-pit at some distance from the house. While near the

dung-pit, accused is said to have dealt with couple of blows with knife to the victim, one on the left side chest and another on the back. Suryaba shouted "Aliba" and tried to run away, however, he collapsed near the fodder heap.

. It is a peculiar case wherein no report was made to police. The above incident is said to have been witnessed by P.W.6 Tulsabai, mother of the victim and accused Rakhamabai (P.W.9) and sister Muktabai. It appears that immediately after the incident, accused realised his mistake and he is said to have made extra judicial confession together with an appeal that matter may not be reported to the police. With the assistance of P.W.4 Macchindra Patil and one Bajrang, intimation was given to wife of the deceased. At the material time, she was with her parents at village Hiware, where she had gone for Diwali festival and had not returned to matrimonial place till then. Wife of the deceased namely;- Mugabai (P.W.5) arrived with her parents and relatives. Accused is said to have made extra judicial confession to them as well and also an appeal for pardon. Consequently, the dead body was cremated by the side of a brook-let and no

intimation was sent to police.

. It appears that on 3rd December, 1993, A.P.I. Shri.Patil (P.W.10) received a letter from the office of Superintendent of Police, Sangli. This letter was accompanied by an anonymous complaint reporting about the murder of one Suresh Khandekar and expecting investigation into the same. On receipt of this letter, Shri.Patil started investigation. He recorded statement of Mugabai widow of deceased Suryaba which was treated as F.I.R. After completion of investigation, he filed charge-sheet and the case has ended in conviction as above.

3. The prosecution has examined as many as ten witnesses. As already referred, during the narration of prosecution story, P.W.6 Tulsabai (neighbour) and P.W.9 Rakhmabai (mother) are the eye witnesses, however, the mother turned hostile. During the cross-examination by A.P.P., she has come around and admitted entire prosecution story except the act of accused inflicting couple of stab injuries to the victim. Needless to say that during the cross-examination by the defence

counsel, she has again gone back to support the defence to some extent.

. Prosecution has as many as four witnesses who claimed to have heard extra judicial confession of the accused. Those are P.W.4 Macchindra Patil who had reached the location immediately after the incident and who had been to Hiware to give intimation, P.W.5 Mugabai the widow of the deceased, P.W.8 Namdeo the third brother of accused and victim. In fact, Rakhmabai and Tulsabai also claimed to have heard confession when the accused made it to others i.e. in-laws of the deceased.

. Remaining witnesses are comparatively of insignificant importance. P.W. 1 Balasaheb is the panch witness to the spot panchnama (Exhibit-8) of spot of offence. P.W.7 Sultan Nadaf is a Revenue Circle Inspector and at the request of Investigating Officer, he has drawn a sketch of the location which is at Exhibit-20. P.W.2 Arun Chavan and P.W.3 Madhukar Khobare are panchas to the discovery proceedings under Section 27 of the Indian Evidence Act. It is the claim of A.P.I. Shri.Patil (P.W.10) that a Memorandum of the

statement of the accused was recorded and weapon (knife) so also the clothes of the victim and clothes of the accused worn at the time of incident, were discovered at the instance of the accused. Unfortunately for the prosecution, both the panch witnesses turned volte-face and the Memorandum and Panchnama were required to be proved by Investigating Officer Shri.Patil and those are at Exhibits-36 and 37.

4. So far as defence of the accused is concerned, on reference to statement under Section 313 of Code of Criminal Procedure, it is evident that opportunity to explain is not enjoyed with much success by the accused. He has answered all the questions by saying "it is false". Therefore, it must be said that defence of the accused is that of total denial. To the last question, he has answered that Tulsabai was desirous of purchasing his land and that too at lower price and therefore, she has filed a false complaint against him. Even on taking into consideration, the tenor of cross-examination, defence does not appear to have suggested any concrete defence except bare denial.

5. Heard advocate Shri.K.S.Patil for the appellant and A.P.P. Mr.A.M.Shringarpure for the Respondent-State. According to advocate Mr.Patil, extra judicial confession is a weak piece of evidence and Tulsabai is unreliable witness because the time being such that she ought to have been busy in cooking and she cannot be said to have witnessed the incident. As a second line of argument, he has placed reliance upon reported judicial pronouncements and according to him, applying tests as laid down in the reported judgments, this is a case which would fit within the purview of Section 304-II of IPC rather than Section 302 of IPC. Apart from acquittal, he urged for reduction of the charge and consequent sentence, if this Court is not inclined to acquit the accused.

. Learned A.P.P. has urged that the trial Court has rightly believed the evidence of eye witness Tulsabai as also of all other witnesses claiming extra judicial confession. He also opposed the submission of advocate Shri.Patil for the appellant that the case fits either in exception I or exception IV to Section 300 of IPC and therefore,

the offence would fall within purview of Section 304-II of IPC and not under Section 302 of IPC. According to learned A.P.P., this is not a case of grave and sudden provocation, because, according to prosecution story, there was altercation, accused had his own time to go inside the house and bring out the knife. Even after he was armed with knife, there was some scuffle during which accused had dragged victim to some distance and then stabbed him. This cannot be said to be a case where, as a result of grave and sudden provocation, accused had lost self-control over his own self. So far as second Exception is concerned, the learned A.P.P. has pointed out that since the victim was totally unarmed, accused being armed with knife, is at an advantageous position and therefore, benefit of Exception IV to Section 300 of IPC, will not be available to the appellant-accused.

6. On referring to the judgment of the trial Court (we must remember that we do not have assistance of medical evidence), the trial Judge has considered the prosecution story; firstly, in the light of depositions of eye witness Tulsabai and mother of the accused Rakhmabai. Challenge posed by the

defence about Tulsabai possibly being not an eye witness, is repelled by the learned Judge in the light of admission by mother Rakhmabai that Tulsabai was amongst others who had reached there. The learned Judge has also taken a note of statement of Tulsabai that she had come out from her house after hearing the quarrel and thus, the trial Court has believed the story that Tulsabai must have witnessed the violent part of the incident i.e. scuffle between the two and stabbing of victim by the accused.

. Subsequently, trial Court considered the evidence of P.W.4 Macchindra Patil. No doubt, Macchindra Patil is a coolie and for earning his livelihood, he stays at Mumbai. But, according to him, he was also at the native village for the purpose of Diwali festival. The trial Court found evidence of Macchindra and also that of brother of the accused namely;- Namdeo (P.W.8) to be reliable, so far extra judicial confession is concerned. Thus having felt that eye witness account of the incident as given by Tulsabai and extra judicial confession as claimed to have been heard by as many as four witnesses, the trial Judge arrived at a

conclusion that the accused is guilty of homicide of victim Suryaba. In the concluding part of the judgment, the learned Judge has also considered the argument of the defence that extra judicial confession is a weak piece of evidence. Apart from the fact that extra judicial confession if convincing, can form the basis of conviction, the learned Judge also took a note of the fact that in the matter at hands, the extra judicial confessions are also supported by eye witness account of the incident as given by Tulsabai. The learned Judge has, therefore, held the appellant guilty for offence punishable under Section 302 of IPC.

7. Shri.Patil has strenuously taken us through the evidence of all the witnesses. So far as Tulsabai is concerned, he relied upon same argument as was advanced before the trial Court. Because, it was 7.00 p.m. and it was cooking time, which is also evident from initial conversation between the accused and his mother as narrated by Tulsabai, it was submitted that Tulsabai could not have witnessed the incident. In this context, Tulsabai has deposed that "at that time, Muktabai and Rakhmabai were in the house and I was in the house

and I came out of house after hearing the noise of quarrel, which was started in front of their house". Although, advocate Shri.Patil tried to lay emphasis on the statement that Tulsabai was inside the house, we must read the statement of witness as a whole. We cannot read only half the sentence. This particular portion from the deposition of Tulsabai, which was tried to be analysed by Shri.Patil, clearly shows that, according to version of Tulsabai, although initially she was inside her house, hearing the verbal exchange, she had come out. Admittedly, house of Tulsabai is neighbouring to that of house of accused and there is open space infront of the houses.

. According to Tulsabai, the incident occurred thus:-

> . "While deceased was sitting on the platform and accused was standing at the door, deceased commanded mother to prepare egg-curry. Sister Muktabai offered to prepare ‘Zunaka’, because eggs were not in the stock at home. Deceased started abusing. At this juncture, the accused went inside the house and came out with a knife. Even thereafter there was verbal exchange between the accused and the deceased which aggravated into the physical

> scuffle. During the scuffle, Raghunath dragged victim Suryaba upto dung-pit which is at some distance from the platform where the incident initially started. It is near the said dung-pit that Raghunath inflicted two knife blows, one on the left side of the chest and another in the back of victim Suryaba."

. This description will have to be considered at length when we deal with second issue raised by the learned advocate for the appellant.

. Having referred to the sketch drawn by the Revenue Circle Inspector and which is at Exhibit-20 on record of the trial Court, it can be seen that house of Tulsabai is numerical number 10, numerical number 2 is the platform where earthen water container was kept and where the incident began. Between the house of Tulsabai and location indicated by numerical number 11, where ultimately victim collapsed, there does not seem to be any visual obstruction. Thus, Tulsabai must have seen the incident need not be looked with disbelief merely because, it was evening time. Tulsabai has admitted that initially she was inside the house.

. In fact, on reference to deposition of Rakhmabai

and reference to that part before she was declared hostile, Rakhmabai has admitted presence of Tulsabai. According to Rakhmabai, Raghunath and Suryaba were quarrelling in the house and they went outside the house simultaneously. Tulsabai and others had come there while the quarrel was going on. This strengthens the claim of Tulsabai that she has witnessed the incident.

8. In fact, on reference to deposition of Rakhmabai and more particularly, the portion with which material is obtained from her by learned A.P.P. by subjecting her to cross-examination, it is evident that Rakhmabai has admitted almost all the details of the prosecution story as narrated by Tulsabai. The only region where she does not support the prosecution is the portions marked ‘A’ and ‘B’ from her police statement. These portions are also brought on record by the prosecution during the evidence of Investigating Officer. The two portions in Marathi read thus:

. "Tevdhyat Raghunath Ha Gharat Gela va Lagech Baher Aala. Tyache Hatat Suri Disali". **-‘A’**

. "Raghunathane Baher Jauan Suryabas Ukirdyakade Neaun Tyache Chativar va Pathit Surine War Kele." **-'B'**

. We are aware that these portions cannot be used as substantive piece of evidence but these portions are used by the prosecution to impeach Rakhmabai when she denied the knowledge as to how deceased Suryaba suffered stab injuries. The contradictions brought on record in the form of these two portions Exhibits-34 and 35, certainly demonstrate that Rakhmabai had narrated a story before the Investigating Officer, of accused having brought knife by going inside house and thereafter accused having dragged victim to the cow-dung pit or waste-heap and he had stabbed the victim after travelling some distance. The contradiction certainly can be used to restrict the adverse effects that prosecution could have suffered because of hostility of Rakhmabai. Consequently, the other evidence of Rakhmabai also can be safely accepted to corroborate Tulsabai.

. We have no hesitation to hold that evidence of Tulsabai can be considered to be truthful since the same is fully corroborated by evidence of Rakhmabai

except the crucial part regarding stab injuries about which Rakhmabai showed signs of hostility and for obvious reasons. She is mother of both, one son has died and other son was facing prospects of life imprisonment.

9. So far as extra judicial confession is concerned, P.W.4 Macchindra Patil has claimed to have heard the same immediately after the incident. He claims to have heard the same again when in-laws of victim arrived at Pratappur and interrogated the accused. P.W.5 Mugabai is the wife of accused. Although, advocate Shri.Patil tried to point out that immediately after the last rites, she has shifted to the place of parents, we are unable to draw any inference such as existence of any discordant note in the matrimonial life of deceased and Mugabai. We cannot infer that Mugabai is deposing against her husband, because of any heart burning between the two. According to Mugabai when she and her parents enquired the accused, accused told that Suryaba had sold the goat, he was under influence and then there was quarrel between him and the deceased during which he gave a knife blow to the victim. Even Tulsabai claimed to have heard

extra judicial confession when accused Raghunath narrated the incident to his in-laws. Mother Rakhmabai during her cross-examination by learned A.P.P. has confirmed the story that Macchindra and Bajrang had been to village Hiware for giving message to the in-laws of the victim and upon arrival of the in-laws, the accused confessed them. The story of extra judicial confession is deposed to, by eye witnesses in a consistent manner. It is evident that in the narration of extra judicial confession by all the deponents, there is indication that the accused was apologetic and he desired them to save him. All the persons to whom accused confessed are related to him. P.W.4 Macchindra is second degree cousin because Kayappa (father of the accused) is said to be cousin uncle of the witness. Mugabai is wife of the accused. Tulsabai is his sister-in-law (wife of cousin brother) and P.W.8 Namdeo and P.W.9 Rakhmabai are his brother and mother respectively. We are inclined to believe the story of extra judicial confession not merely because it is consistently narrated by more than one witnesses but because of the subsequent events as influenced by these extra judicial confessions. Admittedly, Suryaba died on

the spot near the dung-pit and he was cremated on the bank of brook-let near the agricultural land. It is evident that all the relatives, because of extra judicial confession and apologetic mood of the accused, decided to pardon the accused and therefore, instead of reporting the matter to police, dead body was cremated and total silence was observed, so far as setting criminal law into motion.

10. We quote some part of deposition of Mugabai from her cross-examination:

> . "Relatives of Raghunath and other persons from our Vasti (locality) enquired with us whether we have any complaint. As Raghunath told that the mistake had happened at his hands and hence, we told that dead body be cremated and told that we have no complaint."

. It appears that not only the apology of the accused or admission of mistake by him, but the background of the victim has contributed to pursuading relatives to accept the apology of the accused and pardoned him. As already narrated earlier, admittedly victim had taken to liquor

addiction and he had started selling the movables (more particularly livestock) of the family, in all probabilities for specific needs of his bad habits. The extra judicial confessions were therefore, rightly believed by the trial Court.

11. Advocate Shri.Patil has tried to place reliance upon Exceptions Ist and IVth to Section 300 of IPC, which read as follows:

> . **Exception I- When culpable homicide is not murder:-** Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident;

. The explanation to the Exception clearly indicates that whether provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact. Exception IV reads;-

> . "**Exception IV;-** Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel

and without the offender having taken undue advantage or acted in a cruel or unusual manner".

. By virtue of explanation to IVth Exception, it is necessary to see in such cases, as to which party offered the provocation or committed first assault.

12. So far as IVth Exception is concerned, upon taking into consideration the facts of the case, it is evident that accused had been inside the house, he had procured the knife and it is nobody's case that deceased was armed with any weapon. Consequently, the attempt on the part of defence to rely upon IVth Exception would stand frustrated, because the accused has taken the undue advantage by using arm against unarmed victim.

. So far as the Ist Exception is concerned, we feel that both the clauses of the Exception need to be considered with equal seriousness. The provocation of the victim must be to the accused, it must be grave and it must also be sudden. By its gravity and suddenness, it should be capable of depriving the accused of the power of self-control.

In the matter at hands, it appears that the accused has lost self-control. The question to be considered is whether the incident by which accused was provoked, provided grave and sudden provocation.

. Advocate Shri.Patil has tried to rely upon the background of the family. There is no denial that victim had sold a she-goat couple of days prior to alleged incident. On the earlier day, accused had frustrated attempt of the victim to carry away she-buffalo for effecting sale. On the date of incident, attempt of the family to pursuade purchaser of the goat to return the same, was futile. It is on this background, the incident in question took place. What happened on the spur of moment is narrated by Tulsabai and confirmed by mother Rakhmabai. The accused and victim both were present at home, victim at the platform and accused at the entrance of the house. Victim started abusing as Muktabai expressed inability to comply the desire of the accused to have egg-curry for the meals. Being irritated of negative reply by Muktabai that she cannot prepare egg-curry as the eggs were not available, accused had started

abusing. If we take this background into account, it cannot be said that deceased had started abusing the accused, first handicap in relying upon Exception-I for the appellant, would be that provocation if any, was to sister Muktabai or mother Rakhmabai. No doubt, person is bound to be furious if he sees that somebody is abusing either his mother or his sister. With the background of the reason for the quarrel, the provocation cannot be said to have come all of a sudden. The drinking habit and possibly consequent hostile behaviour was not new to the family. Lastly, we do not feel convinced that the accused's abusing was such a grave provocation that would make the accused lose his self-control. Although accused had lost self-control, the details of the incident do not enable us to say that it was the result of grave and sudden provocation offered by the deceased.

. We also cannot ignore the fact that as soon as the deceased started abusing, accused got himself armed with knife. Thereafter there was verbal exchange between the deceased and the accused. This is not a case that no sooner deceased abused, accused procured the knife and stabbed him. The

knife was not used for sometime. This is because, according to prosecution, there was hot exchange followed by scuffle and ultimately the victim was dragged by the accused to some distance near cow-dung where he stabbed the victim. We believe the chain of evidence did give time for the accused to cool down and realise that provocation if any, that had come from the accused, was not such that brother was required to be consigned to death.

13. In order to pursuade us that the case falls within either Exceptions, Shri.Patil has placed reliance upon reported judgment in the matter of **K.M.Nanavati Vs. State of Maharashtra; 1961 (Vol.LXIV) Bombay Law Reporter Page 438.** Shri.Patil has placed reliance upon the principle laid down in following words:

> . "For the purpose of Exception I to Section 300 of IPC, the test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in a situation in which the accused was placed would be so provoked as to lose his self-control. Words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the Exception. The mental background created by the

> previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation."

. There cannot be disagreement with the principle and test laid down by the Honourable Supreme Court. In the matter at hands, stabbing has taken place immediately after verbal exchange and physical scuffle. But as discussed by us earlier, Ist Exception cannot be forced into service by the appellant in the present case, because we are not convinced about the gravity as well as suddenness of the same. In this context, it also must be taken into account that accused Raghunath was not permanent family member at Pratappur. He was residing at Sangli for earning his livelihood and was a visitor to native place and family members on holidays. It, therefore, cannot be said that he has persistently undergone the torture as family members of the drunkard otherwise suffered.

14. In the matter of **Mathew alis Mathachan Vs. State of Kerala; 1991 Cri.L.J. 1679,** a young child of the accused was kept by him at the house of C.W.4. It was taken away by P.W.3 on October 7th, 1978 at about 1.00 p.m. Having learnt this, the appellant went to the house of father-in-law and quarrel ensued. On the same day at about 6 p.m. while P.W.1 and deceased were passing by the shop of P.W.2, the appellant met them and once again there was an exchange of abuses, grapping and ultimately the appellant stabbed his father-in-law. A scuffle had ensued between the victim and the appellant and stab wounds, were inflicted during such scuffle. The trial Court held the appellant guilty under Section 304-II as it thought the case fell within the clause ‘Thirdly’ of Section 300. The High Court on re-appreciation of the evidence, reversed this finding holding that it was a murder case, it held that attack was one sided and nature of injuries caused and the weapon used. In the light of background of estrangement between the appellant and his wife as also carrying away of his child, the Apex Court was of the view that the High Court had not appreciated the mental state of the appellant when his child was removed from his

custody. The point because of which the Apex Court felt that the appellant in the reported matter, must have lost power of self-control was more serious than mere drinking habit or abusing the sister on the part of victim in the case before us.

15. In the matter of **Suraj Mal Vs. State of Punjab; 1992 Cri.L.J. 520,** the appellant was held guilty for offence punishable under Section 304-II of IPC. The case was based on dying declaration which indicated that the victim and his brother had gone to answer the call of nature after consuming alcohol together and on the way brother questioned about decision to sell the property, whereupon the deceased replied that it was his property and he could dispose the same in any manner he liked. After this conversation there was quarrel between the two i.e. deceased and appellant and during the quarrel appellant stabbed deceased. It was a single injury held to be without premeditation and in a sudden fight.

. In the matter at hands, the accused had got himself armed with the knife, as soon as the victim abused sister (there was no provocation to the

accused himself). This was followed by verbal exchange and a scuffle. Accused had dragged victim to some distance and then dealt with couple of blows one in the chest and another on the back of the victim. We are unable to agree with the submission, even after comparing the facts of the case before us with the facts in the reported matters relied upon by learned counsel that this is a case where provocation was so grave and sudden that accused lost power of self-control or that accused inflicted injuries in sudden fight and without any premeditation. We are, therefore, not inclined to agree with the learned counsel that the appellant's case would fall within the definition of less severe offence.

16. So far as charge under Section 201 of IPC is concerned, even accepting entire prosecution story as it is, what we find is that the appellant-accused begged pardon of all the family members and desired them not to report the matter to police. When we have believed his extra judicial confession, we must accept the story that he admitted his mistake, begged pardon and prayed for protection. Consequently, all the family

members together had cremated the dead body at the bank of brook-let. This is not a case like others wherein, the accused who committed murder, caused disappearance of dead body either by burying or by burning. We are, therefore, convinced that charge under Section 201 of IPC is not sustainable. In fact, at the commencement of his arguments, we had hinted to the learned counsel for the appellant that we were inclined to set aside the trial Court judgment to the extent it recorded finding of guilty and conviction for offence punishable under Section 201 of IPC and therefore, he need not advance submissions on that point. We confirm our view as was felt by us at the beginning of the matter.

17. The appeal therefore, partly succeeds. The impugned judgment dated 5th May, 2000 recorded in Sessions Case No. 36 of 1994 by IVth Additional Sessions Judge, Sangli is quashed and set aside so far as it records finding of guilty, conviction and sentence for the offence punishable under Section 201 of IPC. Consequently, fine if any, paid on that count, shall be refunded to the appellant-accused.

. The judgment recording finding of guilty and conviction so far as offence under Section 302 of IPC is concerned, the same is confirmed.

. We also do not intend to vary the order of compensation Rs.6000/- awarded in favour of complainant Mugabai alias Tanibai, to be paid from the fine amount.

. Registrar (Judicial) shall ensure supply of certified copy of this judgment, free of costs, to the appellant, through prison authorities.

[N.V.DABHOLKAR, J.]

[SMT.V.K.TAHILRAMANI,J.]